

AMENDED IN ASSEMBLY APRIL 13, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1822**

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**Introduced by Assembly Member Swanson**

February 11, 2010

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An act to amend Sections 4600.5, 4601, 4601.3, 4601.4, 4603.1, 4605, 4606, and 4612 of, ~~to add Section 4600.1 to, and to add Chapter 10.5 (commencing with Section 4600.1) to Division 2 of~~ *and to add Sections 4600.1 and 4601.35 to*, the Business and Professions Code, relating to massage therapy, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1822, as amended, Swanson. Massage therapy.

Existing law, until January 1, 2016, provides for the voluntary certification of massage practitioners and massage therapists by a nonprofit Massage Therapy Organization, as defined *and governed by a board of directors*, and imposes certain duties on that organization. Existing law, until January 1, 2016, requires an applicant for certification to be 18 years of age or older, to meet specified educational criteria, to provide specified information to the organization, to provide fingerprints for submission by the organization to the Department of Justice for state and federal criminal background checks, and to pay the fees required by the organization. Existing law requires the Department of Justice to conduct a criminal background check on every applicant and to provide to the organization fitness determinations and certain other information regarding an applicant. Existing law, until January 1, 2016, allows the

organization to take certain disciplinary action against certificate holders and requires the organization to take certain action with regard to suspending or revoking a certificate if the certificate holder has been arrested for, and charged with, specified sex-related crimes. Existing law makes it an unfair business practice for a person to state, advertise, or represent that he or she is certified or licensed by a governmental agency as a massage therapist or practitioner, or to make other false representations, as specified. Existing law prohibits a city, county, or city and county from enacting an ordinance that requires a certificate holder to obtain any other license, permit, or other authorization to engage in the practice of massage. Notwithstanding that prohibition, existing law authorizes a city, county, or city and county to adopt and enforce any local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses. Existing law also exempts from certain local regulations sole proprietorships, as defined, and massage establishments or businesses that only employ persons who are certified.

This bill would, until January 1, 2016, require any person who administers massage for compensation to be *either* certified by the nonprofit Massage Therapy Organization or certified, registered, or licensed by a city, county, or city and county. ~~On and after January 1, 2016, the bill would require any person who administers massage for compensation to be certified, registered, or licensed by a city, county, or city and county, which certification, registration, or licensure would be administered and regulated by the city, county, or city and county for a specified fee, thereby imposing a state-mandated local program. The bill would also authorize a city, county, or city and county to require any person who administers massage or who owns a massage establishment or business to hold a business license or massage establishment permit or both. The bill would add 2 members to the board of directors of the organization who would be selected by specified peace officer associations.~~

This bill, *at the election of the governing body of a city, county, or city and county by resolution and by concurrence of the head of the local law enforcement agency in that jurisdiction*, would also transfer specified duties from the Massage Therapy Organization to *the* local law enforcement ~~agencies~~ agency. ~~The~~ *Upon that election, the* bill would require an applicant for certification by the organization to provide his or her fingerprints to the local law enforcement agency in the city, county, or city and county in which the applicant will be

administering massage for submission to the Department of Justice for the requisite state and federal criminal background checks. ~~The~~ *Upon that election, the* bill would require the Department of Justice to provide to the local law enforcement agency the fitness determination regarding the applicant, and would require the local law enforcement agency to conduct a local investigation related to the fitness of the applicant. ~~By imposing additional duties on local law enforcement agencies, the bill would impose a state-mandated local program.~~ *The Upon that election, the* bill would require the Department of Justice and local law enforcement agencies to charge a reasonable fee sufficient to cover those costs. The bill would require the organization to establish a standardized form for statewide use for purposes of the fingerprinting requirements.

~~This~~

*Upon that election, this* bill would require local law enforcement agencies to approve or disapprove applicants for certification by the organization *based upon his or her fitness to practice massage therapy, as specified*, and would prohibit the organization from providing certification upon disapproval. The bill would allow an applicant to appeal a denial of certification, and would provide a specified procedure for that appeal. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified by a governmental entity or the Massage Therapy Organization unless that representation is true. The bill would make other conforming changes, including to those provisions that exempted from certain local regulations sole proprietorships and massage establishments or businesses that only employ persons who are certified.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~ *no*.

*The people of the State of California do enact as follows:*

1     SECTION 1. It is the intent of the Legislature to clarify existing  
2 law with regard to the authority of a city, county, or city and county  
3 to enforce local regulations in connection with massage  
4 establishments and businesses. It is further the intent of the  
5 Legislature to provide greater authority to local law enforcement  
6 agencies in connection with the certification of persons who  
7 administer massage for compensation, ~~and to provide for the~~  
8 ~~continuation of local regulation upon the inoperative date of the~~  
9 ~~current regulatory scheme.~~

10    SEC. 2. Section 4600.1 is added to the Business and Professions  
11 Code, to read:

12    4600.1. (a) Any person who administers massage for  
13 compensation shall hold at least one of the following:

14    (1) A certificate issued pursuant to this chapter.

15    (2) (A) A certificate, registration, or license to administer  
16 massage issued by the city, county, or city and county in which  
17 the person will be administering massage.

18    (B) *Notwithstanding subparagraph (A), any person who*  
19 *administers massage for compensation and who practices in a*  
20 *city, county, or city and county that does not administer a*  
21 *certification, registration, or licensing scheme pursuant to*  
22 *subparagraph (A) shall be required, at a minimum, to be certified*  
23 *by the organization pursuant to paragraph (1).*

24    (b) Notwithstanding subdivision (a) or any other provision of  
25 this chapter, any city, county, or city and county may require any  
26 person who administers massage for compensation, or who owns  
27 a massage establishment or business, to also hold a business license  
28 or a massage establishment permit or both.

29    (c) Local law enforcement may enforce any local ordinance that  
30 requires a certificate, registration, license, or permit as provided  
31 in this section.

32    (d) It shall be unlawful for any person who administers massage  
33 for compensation to fail to comply with the requirements specified  
34 in subdivision (a), or to fail to hold a business license or a massage  
35 establishment permit in a jurisdiction that requires an additional  
36 license or permit pursuant to subdivision (b).

37    SEC. 3. Section 4600.5 of the Business and Professions Code  
38 is amended to read:

1     4600.5. (a) A Massage Therapy Organization, as defined in  
2 subdivision (e) of Section 4600, shall be created and shall have  
3 the responsibilities and duties set forth in this chapter, subject to  
4 the limitations imposed under Section—4601.3 4601.35, *if*  
5 *applicable*. The organization may take any reasonable actions to  
6 carry out the responsibilities and duties set forth in this chapter,  
7 including, but not limited to, hiring staff and entering into contracts.

8     (b) (1) The organization shall be governed by a board of  
9 directors made up of two representatives selected by each  
10 professional society, association, or other entity, whose  
11 membership is comprised of massage therapists and that chooses  
12 to participate in the organization. To qualify, a professional society,  
13 association, or other entity shall have a dues-paying membership  
14 in California of at least 1,000 individuals for the last three years,  
15 and shall have bylaws that require its members to comply with a  
16 code of ethics. The board of directors shall also include each of  
17 the following persons:

18     (A) One member selected by each statewide association of  
19 private postsecondary schools incorporated on or before January  
20 1, 2010, whose member schools have together had at least 1,000  
21 graduates in each of the previous three years from massage therapy  
22 programs meeting the approval standards set forth in subdivision  
23 (a) of Section 4600, except from those qualifying associations that  
24 choose not to exercise this right of selection.

25     (B) One member selected by the League of California Cities,  
26 unless that entity chooses not to exercise this right of selection.

27     (C) One member selected by the California State Association  
28 of Counties, unless that entity chooses not to exercise this right of  
29 selection.

30     (D) One member selected by the Director of Consumer Affairs,  
31 unless that entity chooses not to exercise this right of selection.

32     (E) One member appointed by the California Community  
33 College Chancellor's Office, unless that entity chooses not to  
34 exercise this right of selection. The person appointed, if any, shall  
35 not be part of any massage therapy certificate or degree program.

36     (F) *One member selected by the California Police Chiefs*  
37 *Association, unless that entity chooses not to exercise this right of*  
38 *selection.*

1 (G) *One member selected by the California State Sheriffs*  
2 *Association, unless that entity chooses not to exercise this right of*  
3 *selection.*

4 The organization's bylaws shall establish a process for appointing  
5 other professional directors as determined by the board.

6 (2) The initial board of directors shall establish the organization,  
7 initiate the request for tax-exempt status from the Internal Revenue  
8 Service, and solicit input from the massage community concerning  
9 the operations of the organization. The initial board of directors,  
10 in its discretion, may immediately undertake to issue the certificates  
11 authorized by this chapter after adopting the necessary bylaws or  
12 other rules, or may establish by adoption of bylaws the permanent  
13 governing structure prior to issuing certificates.

14 (c) The board of directors shall establish fees reasonably related  
15 to the cost of providing services and carrying out its ongoing  
16 responsibilities and duties. Initial and renewal fees shall be  
17 established by the board of directors annually.

18 (d) The meetings of the organization shall be subject to the rules  
19 of the Bagley-Keene Open Meeting Act (Article 9 (commencing  
20 with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title  
21 2 of the Government Code).

22 SEC. 4. Section 4601 of the Business and Professions Code is  
23 amended to read:

24 4601. (a) The organization shall issue a certificate under this  
25 chapter to an applicant who satisfies the requirements of this  
26 chapter, subject to the limitations imposed under Section ~~4601.3~~  
27 *4601.35, if applicable.*

28 (b) (1) In order to obtain certification as a massage practitioner,  
29 an applicant shall submit a written application and provide the  
30 organization with satisfactory evidence that he or she meets all of  
31 the following requirements:

32 (A) The applicant is 18 years of age or older.

33 (B) The applicant has successfully completed, at a single  
34 approved school, curricula in massage and related subjects totaling  
35 a minimum of 250 hours that incorporates appropriate school  
36 assessment of student knowledge and skills. Included in the hours  
37 shall be instruction addressing anatomy and physiology,  
38 contraindications, health and hygiene, and business and ethics,  
39 with at least 100 hours of the required minimum 250 hours devoted  
40 to these curriculum areas.

1 (C) All fees required by the organization have been paid.

2 (2) New certificates shall not be issued pursuant to this  
3 subdivision after December 31, 2015.

4 (c) In order to obtain certification as a massage therapist, an  
5 applicant shall submit a written application and provide the  
6 organization with satisfactory evidence that he or she meets all of  
7 the following requirements:

8 (1) The applicant is 18 years of age or older.

9 (2) The applicant satisfies at least one of the following  
10 requirements:

11 (A) He or she has successfully completed the curricula in  
12 massage and related subjects totaling a minimum of 500 hours. Of  
13 this 500 hours, a minimum of 250 hours shall be from approved  
14 schools. The remaining 250 hours required may be secured either  
15 from approved or registered schools, or from continuing education  
16 providers approved by, or registered with, the organization or the  
17 Department of Consumer Affairs.

18 (B) The applicant has passed a massage and bodywork  
19 competency assessment examination that meets generally  
20 recognized psychometric principles and standards, and that is  
21 approved by the board. The successful completion of this  
22 examination may have been accomplished before the date the  
23 organization is authorized by this chapter to begin issuing  
24 certificates.

25 (3) All fees required by the organization have been paid.

26 (d) The organization shall issue a certificate to an applicant who  
27 meets the other qualifications of this chapter and holds a current  
28 and valid registration, certification, or license from any other state  
29 whose licensure requirements meet or exceed those defined within  
30 this chapter. The organization shall have discretion to give credit  
31 for comparable academic work completed by an applicant in a  
32 program outside of California.

33 (e) An applicant applying for a massage therapist or massage  
34 practitioner certificate shall file with the organization a written  
35 application provided by the organization, showing to the  
36 satisfaction of the organization that he or she meets all of the  
37 requirements of this chapter.

38 (f) Any certification issued under this chapter shall be subject  
39 to renewal every two years in a manner prescribed by the

1 organization, and shall expire unless renewed in that manner. The  
2 organization may provide for the late renewal of a certificate.

3 (g) (1) The organization shall have the responsibility to  
4 determine that the school or schools from which an applicant has  
5 obtained the education required by this chapter meet the  
6 requirements of this chapter. If the organization has any reason to  
7 question whether or not the applicant received the education that  
8 is required by this chapter from the school or schools that the  
9 applicant is claiming, the organization shall investigate the facts  
10 to determine that the applicant received the required education  
11 prior to issuing a certificate.

12 (2) For purposes of paragraph (1) and any other provision of  
13 this chapter for which the organization is authorized to receive  
14 factual information as a condition of taking any action, the  
15 organization shall have the authority to conduct oral interviews of  
16 the applicant and others or to make any investigation deemed  
17 necessary to establish that the information received is accurate and  
18 satisfies any criteria established by this chapter.

19 ~~SEC. 5.—Section 4601.3 of the Business and Professions Code~~  
20 ~~is amended to read:~~

21 ~~4601.3.—(a) Prior to issuing a certificate to the applicant, the~~  
22 ~~organization shall require the applicant to submit to the local law~~  
23 ~~enforcement agency, in the city, county, or city and county in~~  
24 ~~which the applicant will be administering massage, fingerprint~~  
25 ~~images in a form consistent with the requirements of this section.~~  
26 ~~The local law enforcement agency shall submit the fingerprint~~  
27 ~~images and related information to the Department of Justice for~~  
28 ~~the purpose of obtaining information as to the existence and nature~~  
29 ~~of a record of state and federal level convictions and of state and~~  
30 ~~federal level arrests for which the Department of Justice establishes~~  
31 ~~that the applicant was released on bail or on his or her own~~  
32 ~~recognizance pending trial. Requests for federal level criminal~~  
33 ~~offender record information received by the Department of Justice~~  
34 ~~pursuant to this section shall be forwarded to the Federal Bureau~~  
35 ~~of Investigation by the Department of Justice. The Department of~~  
36 ~~Justice shall review the information returned from the Federal~~  
37 ~~Bureau of Investigation, and shall compile and disseminate a fitness~~  
38 ~~determination regarding the applicant to the local law enforcement~~  
39 ~~agency.~~



1     ~~(b) The Department of Justice shall provide information to the~~  
2     ~~local law enforcement agency pursuant to Section 11105 of the~~  
3     ~~Penal Code.~~

4     ~~(c) The Department of Justice and the local law enforcement~~  
5     ~~agency shall charge a reasonable fee sufficient to cover the cost~~  
6     ~~of processing the request for state and federal level criminal~~  
7     ~~offender record information and the cost of the local investigation~~  
8     ~~conducted under subdivision (c).~~

9     ~~(d) The local law enforcement agency shall request subsequent~~  
10    ~~arrest notification service from the Department of Justice, as~~  
11    ~~provided under Section 11105.2 of the Penal Code, for all~~  
12    ~~applicants for certification for whom fingerprint images and related~~  
13    ~~information are submitted to conduct a search for state and federal~~  
14    ~~level criminal offender record information.~~

15    ~~(e) In addition to the state and federal background checks~~  
16    ~~conducted by the Department of Justice, the local law enforcement~~  
17    ~~agency shall conduct a local investigation by compiling local arrest~~  
18    ~~records and other information related to the fitness of the applicant.~~

19    ~~(f) After conducting the background checks and investigation~~  
20    ~~under this section, the local law enforcement agency shall assess~~  
21    ~~the fitness of the applicant and make a determination as to whether~~  
22    ~~a certificate shall be issued to the applicant, subject also to~~  
23    ~~satisfactory qualification under Section 4601. If the local law~~  
24    ~~enforcement agency approves the applicant for certification, the~~  
25    ~~organization shall issue a certificate to the applicant, unless the~~  
26    ~~organization determines there are other grounds for disapproval,~~  
27    ~~as described in Section 4603. If the local law enforcement agency~~  
28    ~~disapproves the applicant for certification, the organization shall~~  
29    ~~not issue a certificate to that applicant, and the organization shall~~  
30    ~~ensure compliance with the procedures specified in Section 4603.1.~~  
31    ~~An applicant denied certification pursuant to this section may~~  
32    ~~appeal that denial pursuant to the procedures specified in Section~~  
33    ~~4603.1.~~

34    ~~(g) As soon as practicable after enactment of the act adding this~~  
35    ~~subdivision, the organization shall establish a standardized form~~  
36    ~~for statewide use that describes the fingerprinting requirements~~  
37    ~~imposed under this section and what information shall be submitted~~  
38    ~~by an applicant to the local law enforcement agency, which shall~~  
39    ~~include, at a minimum, name, date of birth, social security number,~~  
40    ~~driver's license number, residence history, employment history,~~

1 criminal arrest, conviction, or abatement history, two passport  
2 quality photographs, his or her live scan fingerprints, the specified  
3 local law enforcement fee, and any other information the  
4 Department of Justice needs to conduct criminal background  
5 checks. No local law enforcement agency may require that an  
6 applicant use any other form when submitting his or her  
7 fingerprints pursuant to subdivision (a), unless the organization  
8 fails to comply with this subdivision.

9 (h) This section applies only to the certification process  
10 established under this chapter. This section does not affect any  
11 procedures established by a city, county, or city and county  
12 pursuant to paragraph (2) of subdivision (a) of or subdivision (b)  
13 of Section 4600.1.

14 *SEC. 5. Section 4601.3 of the Business and Professions Code*  
15 *is amended to read:*

16 4601.3. (a) Prior to issuing a certificate to the applicant or  
17 designating a custodian of records, the organization shall require  
18 the applicant or the custodian of records candidate to submit  
19 fingerprint images in a form consistent with the requirements of  
20 this section. The organization shall submit the fingerprint images  
21 and related information to the Department of Justice for the purpose  
22 of obtaining information as to the existence and nature of a record  
23 of state and federal level convictions and of state and federal level  
24 arrests for which the Department of Justice establishes that the  
25 applicant or candidate was released on bail or on his or her own  
26 recognizance pending trial. Requests for federal level criminal  
27 offender record information received by the Department of Justice  
28 pursuant to this section shall be forwarded to the Federal Bureau  
29 of Investigation by the Department of Justice. The Department of  
30 Justice shall review the information returned from the Federal  
31 Bureau of Investigation, and shall compile and disseminate a fitness  
32 determination regarding the applicant or candidate to the  
33 organization.

34 (b) The Department of Justice shall provide information to the  
35 organization pursuant to subdivision (p) of Section 11105 of the  
36 Penal Code.

37 (c) The Department of Justice and the organization shall charge  
38 a fee sufficient to cover the cost of processing the request for state  
39 and federal level criminal offender record information.

(d) The organization shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for licensure or custodian of records candidates certification for whom fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

~~(e) This section shall become operative September 1, 2009.~~

*(e) If the governing body of a city, county, or city and county elects, by resolution and with the concurrence of the head of the local law enforcement agency in that jurisdiction, to be subject to the requirements of Section 4601.35, this section shall not apply with respect to the certification of applicants in that jurisdiction and the organization shall instead comply with the process set forth in Section 4601.35.*

*SEC. 6. Section 4601.35 is added to the Business and Professions Code, to read:*

*4601.35. (a) (1) Notwithstanding Section 4601.3, if the governing body of a city, county, or city and county elects, by resolution and with the concurrence of the head of the local law enforcement agency in that jurisdiction, to be subject to the requirements of this section, this section shall govern the certification process established under this chapter for applicants in that jurisdiction.*

*(2) Prior to issuing a certificate to the applicant, the organization shall require the applicant to submit to the local law enforcement agency in the jurisdiction in which the applicant will be administering massage, fingerprint images in a form consistent with the requirements of this section. The local law enforcement agency shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation,*

1 *and shall compile and disseminate a fitness determination*  
2 *regarding the applicant to the local law enforcement agency.*

3 *(b) The Department of Justice shall provide information to the*  
4 *local law enforcement agency pursuant to Section 11105 of the*  
5 *Penal Code.*

6 *(c) The Department of Justice and the local law enforcement*  
7 *agency shall charge a reasonable fee sufficient to cover the cost*  
8 *of processing the request for state and federal level criminal*  
9 *offender record information and the cost of the local investigation*  
10 *conducted under subdivision (e).*

11 *(d) The local law enforcement agency shall request subsequent*  
12 *arrest notification service from the Department of Justice, as*  
13 *provided under Section 11105.2 of the Penal Code, for all*  
14 *applicants for certification for whom fingerprint images and related*  
15 *information are submitted to conduct a search for state and federal*  
16 *level criminal offender record information.*

17 *(e) In addition to the state and federal background checks*  
18 *conducted by the Department of Justice, the local law enforcement*  
19 *agency shall conduct a local investigation by compiling local arrest*  
20 *records.*

21 *(f) (1) After conducting the background checks and investigation*  
22 *under this section, the local law enforcement agency shall assess*  
23 *the fitness of the applicant and make a determination as to whether*  
24 *a certificate shall be issued to the applicant, subject also to*  
25 *satisfactory qualification under Section 4601. If the local law*  
26 *enforcement agency approves the applicant for certification, the*  
27 *organization shall issue a certificate to the applicant, unless the*  
28 *organization determines there are other grounds for disapproval,*  
29 *as described in Section 4603. If the local law enforcement agency*  
30 *disapproves the applicant for certification, the organization shall*  
31 *not issue a certificate to that applicant, and the organization shall*  
32 *ensure compliance with the procedures specified in Section 4603.1.*  
33 *An applicant denied certification pursuant to this section may*  
34 *appeal that denial pursuant to the procedures specified in Section*  
35 *4603.1.*

36 *(2) For purposes of paragraph (1), in assessing the fitness of*  
37 *the applicant, the local law enforcement agency shall only make*  
38 *a determination that the applicant is unfit if he or she has been*  
39 *convicted of a violation of Section 266h, 266i, 315, 316, or 318*  
40 *of, or subdivision (a) or (b) of Section 647 of, the Penal Code, or*

1 convicted of having committed a commercial sex act or human  
2 trafficking. The local law enforcement agency may not make that  
3 determination of fitness based upon any other factor.

4 (g) As soon as practicable after enactment of the act adding  
5 this subdivision, the organization shall establish a standardized  
6 form for statewide use that describes the fingerprinting  
7 requirements that may be imposed under this section and what  
8 information shall be submitted by an applicant to the local law  
9 enforcement agency, which shall include, at a minimum, name,  
10 date of birth, social security number, driver's license number,  
11 residence history, employment history, criminal arrest, conviction,  
12 or abatement history, two passport quality photographs, his or  
13 her live scan fingerprints, the specified local law enforcement fee,  
14 and any other information needed by the Department of Justice to  
15 conduct criminal background checks. No local law enforcement  
16 agency may require that an applicant use any other form when  
17 submitting his or her fingerprints pursuant to paragraph (2) of  
18 subdivision (a), unless the organization fails to comply with this  
19 subdivision.

20 (h) This section applies only to the certification process  
21 established under this chapter and as set forth in paragraph (1)  
22 of subdivision (a). This section does not affect any procedures  
23 established by a city, county, or city and county pursuant to  
24 subparagraph (A) of paragraph (2) of subdivision (a) of or  
25 subdivision (b) of Section 4600.1.

26 ~~SEC. 6:~~

27 SEC. 7. Section 4601.4 of the Business and Professions Code  
28 is amended to read:

29 4601.4. Organization directors, employees, or volunteer  
30 individuals may undergo a background investigation process  
31 pursuant to subdivision (p) of Section 11105 of the Penal Code,  
32 at organizational expense.

33 ~~SEC. 7:~~

34 SEC. 8. Section 4603.1 of the Business and Professions Code  
35 is amended to read:

36 4603.1. (a) No certificate holder or certificate applicant may  
37 be disciplined or denied a certificate pursuant to Section 4601.3,  
38 4601.35, if applicable, or 4603 except according to procedures  
39 satisfying the requirements of this section. A denial or discipline

1 not in accord with this section or subdivision (c) of Section 4602  
2 shall be void and without effect.

3 (b) Any certificate applicant denial or certificate holder  
4 discipline shall be done in good faith and in a fair and reasonable  
5 manner. Any procedure that conforms to the requirements of  
6 subdivision (c) is fair and reasonable, but a court may also find  
7 other procedures to be fair and reasonable when the full  
8 circumstances of the certificate denial or certificate holder  
9 discipline are considered.

10 (c) A procedure is fair and reasonable when the procedures in  
11 subdivision (c) of Section 4602 are followed, or if all of the  
12 following apply:

13 (1) The provisions of the procedure have been set forth in the  
14 articles or bylaws and copies of those provisions are sent annually  
15 to all certificate holders.

16 (2) It provides the giving of 15 days prior notice of the certificate  
17 denial or certificate holder discipline and the reasons therefor.

18 (3) It provides an opportunity for the certificate applicant or  
19 certificate holder to be heard, orally or in writing, not less than  
20 five days before the effective date of the certificate denial or  
21 certificate holder discipline by a person or body authorized to  
22 decide that the proposed certificate denial or certificate holder  
23 discipline not take place.

24 (d) Any notice required under this section may be given by any  
25 method reasonably calculated to provide actual notice. Any notice  
26 given by mail must be given by first-class or certified mail sent to  
27 the last address of the certificate applicant or certificate holder  
28 shown on the organization's records.

29 (e) Any action challenging a certificate denial or certificate  
30 holder discipline, including any claim alleging defective notice,  
31 shall be commenced within one year after the date of the certificate  
32 denial or certificate holder discipline. If the action is successful,  
33 the court may order any relief, including reinstatement, that it finds  
34 equitable under the circumstances.

35 (f) This section governs only the procedures for certificate denial  
36 or certificate holder discipline and not the substantive grounds  
37 therefor. A certificate denial or certificate holder discipline based  
38 upon substantive grounds that violates contractual or other rights  
39 of the member or is otherwise unlawful is not made valid by  
40 compliance with this section.

1 (g) A certificate applicant or certificate holder who is denied or  
2 disciplined shall be liable for any charges incurred, services or  
3 benefits actually rendered, dues, assessments, or fees incurred  
4 before the certificate denial or certificate holder discipline or arising  
5 from contract or otherwise.

6 ~~(h) The organization may only grant an appeal of the denial of~~  
7 ~~a certificate under Section 4601.3 if there is clear and convincing~~  
8 ~~evidence that the certificate applicant is not a threat to the public~~  
9 ~~health and safety.~~

10 ~~SEC. 8.~~

11 *SEC. 9.* Section 4605 of the Business and Professions Code is  
12 amended to read:

13 4605. (a) It is an unfair business practice for any person to  
14 state or advertise or put out any sign or card or other device, or to  
15 represent to the public through any print or electronic media, that  
16 he or she is certified, registered, or licensed by a governmental  
17 entity as a massage therapist or massage practitioner unless that  
18 representation is true pursuant to paragraph (2) of subdivision (a)  
19 of Section 4600.1.

20 (b) It is an unfair business practice for any person to state or  
21 advertise or put out any sign or card or other device, or to represent  
22 to the public through any print or electronic media, that he or she  
23 is certified by the organization as a massage therapist or massage  
24 practitioner unless that representation is true pursuant to paragraph  
25 (1) of subdivision (a) of Section 4600.1.

26 ~~SEC. 9.~~

27 *SEC. 10.* Section 4606 of the Business and Professions Code  
28 is amended to read:

29 4606. It is an unfair business practice for any person to hold  
30 oneself out or use the title of “certified massage therapist” or  
31 “certified massage practitioner” or any other term, such as  
32 “licensed,” “registered,” or “CMT,” that implies or suggests that  
33 the person is certified as a massage therapist or practitioner without  
34 meeting the requirements of Section 4600.1, 4601, or 4604.

35 ~~SEC. 10.~~

36 *SEC. 11.* Section 4612 of the Business and Professions Code  
37 is amended to read:

38 4612. (a) (1) The holder of a certificate issued pursuant to  
39 this chapter shall have the right to practice massage, consistent  
40 with this chapter and the qualifications established by his or her

1 certification, in any city, county, or city and county in this state  
2 and shall not be required to obtain any other license, permit, or  
3 other authorization, except as provided in this section or  
4 subdivision (b) of Section 4600.1, to engage in that practice.

5 (2) Notwithstanding any other provision of law, a city, county,  
6 or city and county shall not enact an ordinance that requires a  
7 license, permit, or other authorization to practice massage by an  
8 individual who is certified pursuant to this chapter and who is  
9 practicing consistent with the qualifications established by his or  
10 her certification, except as provided in subdivision (b) of Section  
11 4600.1. No provision of any ordinance enacted by a city, county,  
12 or city and county that is in effect before the effective date of this  
13 chapter, and that requires a license, permit, or other authorization  
14 to practice massage, may be enforced against an individual who  
15 is certified pursuant to this chapter, except as provided in  
16 subdivisions (b) and (c) of Section 4600.1.

17 (3) Nothing in this section shall be interpreted to prevent a city,  
18 county, or city and county from adopting or enforcing any local  
19 ordinance governing zoning, business licensing, and reasonable  
20 health and safety requirements for massage establishments or  
21 businesses.

22 (b) (1) This subdivision shall apply to every massage  
23 establishment or business that provides massage services.

24 (2) (A) Every massage establishment or business shall maintain  
25 on its premises evidence for review by local authorities that  
26 demonstrates that all persons providing massage services are  
27 certified or licensed.

28 (B) Nothing in this section shall preclude a city, county, or city  
29 and county from including in a local ordinance a provision that  
30 requires a massage establishment or business to file copies or  
31 provide other evidence of the certificates or licenses held by the  
32 persons who are providing massage services at the massage  
33 establishment or business.

34 (3) A city, county, or city and county may charge a massage  
35 establishment or business a business licensing fee sufficient to  
36 cover the costs of the business licensing activities established by  
37 a local ordinance described in this section.

38 (4) Nothing in this section shall prohibit a city, county, or city  
39 and county from adopting land use and zoning requirements  
40 applicable to massage establishments or businesses.



(5) A city, county, or city and county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services, provided that nothing in this paragraph shall be interpreted to authorize adoption of local ordinances that impose additional qualifications, such as medical examinations or other criteria upon any person certified pursuant to this chapter.

(6) Nothing in this section shall preclude a city, county, or city and county from doing any of the following:

(A) Requiring an applicant for a business license to operate a massage establishment or business to fill out an application that requests the applicant to provide relevant information.

(B) Making reasonable investigations into the information so provided.

(C) Denying or restricting a business license if the applicant has provided materially false information.

(c) An owner or operator of a massage establishment or business shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Nothing in this section shall preclude a local ordinance from authorizing suspension, revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance, occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage establishments or businesses and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the establishment or business to another person.

~~SEC. 11. Chapter 10.5 (commencing with Section 4600.1) is added to Division 2 of the Business and Professions Code, to read:~~

CHAPTER 10.5. ~~MASSAGE THERAPISTS~~

~~4600.1. (a) Any person who administers massage for compensation shall hold a certificate, registration, or license to administer massage issued by the city, county, or city and county in which the person will be administering massage, which certification, registration, or licensure shall be administered and regulated by the city, county, or city and county. Every city, county, or city and county shall charge a reasonable fee sufficient to cover the cost of processing the certificates, registrations, or licenses that are required by this subdivision.~~

~~(b) Any person who holds a certificate issued by the former Massage Therapy Organization and who administers massage for compensation shall be required to comply with subdivision (a).~~

~~(c) A city, county, or city and county may require any person who administers massage for compensation, or who owns a massage establishment or business, to also hold a business license or a massage establishment permit or both.~~

~~(d) Local law enforcement may enforce any local ordinance that requires a certificate, registration, license, or permit as provided in this section.~~

~~(e) Any person who administers massage for compensation and fails to comply with the requirements specified in subdivision (a) or (b), or fails to hold a business license or massage establishment permit in a jurisdiction that requires an additional license or permit pursuant to subdivision (c), shall be guilty of a misdemeanor pursuant to Section 647.15 of the Penal Code.~~

~~4600.5. It is an unfair business practice for any person to state or advertise or put out any sign or card or other device, or to represent to the public through any print or electronic media, that he or she is certified, registered, or licensed by a governmental entity as a massage therapist or massage practitioner unless that representation is true pursuant to subdivision (a) of Section 4600.1.~~

~~4600.7. It is an unfair business practice for any person to hold oneself out or use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of Section 4600.1.~~

**SEC. 12.** ~~No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.~~

*SEC. 12.* This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the public health and safety with regard to the practice of massage, it is necessary that this act take effect immediately.

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